



CENTER for BIOLOGICAL DIVERSITY

Because life is good.

July 1, 2017

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Dear Ms. Diebolt and Colonel Toy,

RE: ACOE's, June 21, 2006, Whetstone/Vigneto 404 Permit Number 2003-00826
(1) is based on premises which are no longer true, (2) betrays the public's
interest, and (3) demands permit reevaluation and rejection.

The Center for Biological Diversity ("Center") is a non-profit, public interest, conservation organization with more than 900,000 members and online activists dedicated to the protection of endangered species and wild places. On behalf of Center members and supporters we respectfully request that ACOE (1) correct the inaccuracies found in the ACOE's supporting documentation for the Whetstone/Vigneto permit and (2) withdraw the permit.

ACOE's, June 21, 2006, Whetstone/Vigneto 404 Permit Number 2003-00826 is based on two studies, (1) ACOE's June 1, 2006, Environmental Assessment (EA), and (2) ACOE's June 13, 2006, Supplement to Environmental Assessment (Supplement). The formal titles of these studies are (1) Environmental Assessment 404(b)(I) Evaluation Statement of Findings Public Interest Review for Permit Application Number: 2003-00826-SDM for Applicant: Whetstone Partners LLP; June 1, 2006, and (2)

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Supplement to Environmental Assessment 404(b)(1) Evaluation Statement of findings
Public Interest Review Permit Application Number: 2003-00826-SDM; June 13, 2006.
Both of these documents are based on premises that are not true.

On June 19, 2015, more than one year ago, Tucson Audubon formally requested that ACOE reevaluate Whetstone Partners' Clean Water Act 404 permit, undertake a new National Environmental Policy Act (NEPA) review, and consult with U.S. Fish and Wildlife Service (FWS) and the U.S. Environmental Protection Agency (EPA). Tucson Audubon documented the fact that since ACOE's 2006 permit issuance, the project has now increased in size from 8,200 acres to 12,324 acres and from up to 20,000 to 27,760 new homes.

To date, ACOE has chosen to stonewall Tucson Audubon.

On June 1, 2016, the City of Benson passed Resolution 16-2016, "authorizing execution of a new Development Agreement between the City of Benson and El Dorado Benson, L.L.C. for the project known as The Villages at Vigneto." The new Development Agreement allows for Vigneto to expand by another 2,433 acres. This represents an increase in acreage of approximately 80% (8,200 acres to 14,757 acres) from the Whetstone Partners' development evaluated by ACOE for the 2006 permit.¹

This correspondence provides further specific information to correct ACOE permit inaccuracies and formalizes notification to the ACOE of the new information that the Whetstone/Vigneto development will be damaging the U.S. Bureau of Land Management (BLM) San Pedro Riparian National Conservation Area (SPRNCA). For your convenience, we use a "non-fact," "fact" format.

ACOE non-fact #1: "...there is no independent Federal involvement in the Project..." (EA page 4.)

Fact: the Bureau of Land Management is involved because the best science to date demonstrates that Whetstone/Vigneto will be stealing water from the BLM's San Pedro Riparian National Conservation Area (SPRNCA) federal reserved water rights.

ACOE non-fact #2: "... no other federal authorizations or approvals beyond the Corps permit are required for this Project..." (EA page 4.)

Fact: Whetstone/Vigneto can pump no water without approval from BLM to allow theft of their congressionally reserved federal water rights. Arizona law, A.R.S. § 45-108 requires demonstration of a 100-year adequate supply of legally available water for the development.

The City of Benson and Whetstone/Vigneto cannot demonstrate that the water they desire is legally available. They cannot demonstrate legal availability as the standing legal

¹ The Villages at Vigneto Development Agreement, between the City of Benson, Arizona...and El Dorado Benson LLC, June 1, 2016, page 5.

authority requires that Arizona Department of Water Resources (ADWR) considers federal reserved water rights PRIOR to granting of a 100-year Certificate of Water Adequacy.²

ADWR failed to consider BLM's federal reserved water rights prior to granting the City of Benson a 100-year Certificate of Water Adequacy. (AWS No. 2008-005 Decision and Order No. 41-401803.0001 In the Matter of the Application of the City of Benson for a Designation as Having an Adequate Water Supply, July 14, 2008.) The City of Benson's 100-year Certificate of Water Adequacy is no longer valid.

ACOE non-fact #3: "... There are no wetlands or other special aquatic sites on the Property or in the immediate vicinity..." (EA page 15.)

Fact: The St. David Cienega is in the immediate vicinity of the Whetstone/Vigneto development. Cienega habitat is among the rarest, the most threatened, and the most valuable habitats in the Southwest.³

Based on the latest and best available science, the BLM San Pedro Riparian National Conservation Area's St. David Cienega will likely be destroyed by Whetstone/Vigneto's groundwater pumping.⁴

In this evaluation, Dr. Prucha concludes:

"Conclusions..."

² ORDER, Robin Silver, Patricia Gerrodette, United States of America Department of Interior Bureau of Land Management v. Pueblo del Sol Water Company, Sandra A. Fabritz-Whitney, Arizona Department of Water Resources, Maricopa County Superior Court of Arizona; June 6, 2014.

³ Cienegas Vanishing Climax Communities of the American Southwest, Dean A. Hendrickson and W.L. Minckley, 1985.
ASSESSMENT OF WATER CONDITIONS AND MANAGEMENT OPPORTUNITIES IN SUPPORT OF RIPARIAN VALUES: BLM San Pedro River Properties, Arizona, Project Completion Report, William Jackson, et al., BLM/YA/PT-88/004+7200; May 1987.

Arizona Riparian Protection Program Legislation Report, A report to the Governor, President of the Senate and Speaker of the House, Arizona Department of Water Resources, July 1994.

Effects of Groundwater Decline on Riparian Vegetation of Semiarid Regions: The San Pedro, Arizona, J.C. Stromberg, R. Tiller, and B. Richter, February 1996.

Cienegas Rare Oasis in the Desert, Shannon Fehlberg, Andrew Salywon, and Kimberlie McCue, June 2011.; Survey and Assessment of Aridland Spring Ciénegas in the Southwest Region, Robert Sivinski and Phil Tonne, October 2011.

The relevance of wetland conservation in arid regions: A re-examination of vanishing communities in the American Southwest, T.A. Minckley, D.S. Turner, and S.R. Weinstein, 2013.; Land Corral/St. David Cienega Trail - San Pedro RNCA, <http://www.blm.gov/az/st/en/prog/recreation/hiking/stdavid.html>; Bureau of Land Management, October 27, 2014, web accessed: June 11, 2016.

⁴ Evaluation of Impacts of Proposed Well Pumping at the Villages of Vigneto Development, southwest of Benson, Arizona on Groundwater beneath the Saint David Cienega, in the Northern San Pedro Riparian National Conservation Area, Prepared by Robert H. Prucha, PhD, PE, Integrated Hydro Systems, LLC, Golden, Colorado, April 18, 2016. (Prucha 2016)

1) It seems clear, following this evaluation, that proposed pumping at the Vigneto Development has the potential to adversely impact spring flow within the Saint David Cienega area, by lowering the water table.

2) Noticeable impacts at the spring will likely take decades to develop, but the model shows a decline in the water table beneath the springs on the order of 0.25 to 0.45 meters after 100 years, using reasonable hydraulic properties (Scenarios 1, 2 and 5)."

Please note that Dr. Prucha's conclusions do not take in to account the additive, independent effects of the predicted, continued increasing groundwater extraction in the Benson area. Dr. Prucha's conclusions also do not take into account increasing local drought owing to climate change. The additive effects of the Benson area's increasing groundwater extraction and of the area's increasing drought will amplify the destructive effects of the Whetstone/Vigneto groundwater pumping on the BLM's St. David Cienega.

ACOE non-fact #4: "... the Applicant has provided a report summarizing hydrogeological investigations conducted by Golder Associates Inc. (Golder) indicating that groundwater extraction from the municipal well field that would serve the Project would not impact the San Pedro River floodplain aquifer or affect the base flow of the river.⁵ This report indicates the deep artesian aquifer that would supply potable water for the Project is located below a clay lens that separates the deep basin-fill aquifer that would supply the Project from the shallow basin-fill aquifer and the floodplain aquifer associated with the San Pedro River." (EA page 29.)

Fact: Golder's conclusion that "groundwater extraction from the municipal well field that would serve the Project would not impact the San Pedro River floodplain aquifer or affect the base flow of the river," is selectively, deceptively, and inappropriately narrow. Golder lies by omission.

The Whetstone/Vigneto pumping will likely destroy the BLM San Pedro Riparian National Conservation Area's St. David Cienega. Whetstone/Vigneto pumping will be stealing water reserved by Congress for the National Conservation Area. Water was reserved for the San Pedro Riparian National Conservation Area by the Arizona-Idaho Conservation Act, Public Law, Public Law 100-696, November 18, 1988. (AICA)

ACOE non-fact #5: "... the Corps nevertheless has no control over whether groundwater is used on the Project and the amount of water so used..." (EA page 29.)

Fact: ACOE has total control over whether the Project proceeds or ends, as the Project cannot proceed without a 404 permit. No permit, no Project. If ACOE does not issue the 404 permit, Whetstone/Vigneto cannot pump the groundwater which will be stolen from water reserved by Congress for the San Pedro Riparian National Conservation Area.

⁵ Technical Memorandum: Whetstone Ranch Groundwater Resources. Golder Associates Inc.: Tucson, AZ.

ACOE non-fact #6: "...Moreover, the CWA itself specifically leaves the allocation of water resources to State law. 33 U.S.C. § 1344(g).." (EA page 29.)

Fact: ACOE misquotes 33 U.S.C. § 1344(g) which states, "(g) **STATE ADMINISTRATION...**(1) The Governor of any State desiring to administer its own individual and general permit program for the discharge of dredged or fill material into the navigable waters... within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact..."

The clear language of the law is a far cry from ACOE's erroneous statement, that "the CWA itself specifically leaves the allocation of water resources to State law." In fact, we have established that the State of Arizona not only fails to obey its own water allocation law, but that the State of Arizona has disregarded science, hydrology, and federal reserved water rights for the San Pedro Riparian National Conservation Area.⁶

The Order in *Silver v. Fabritz-Whitney* states,

"Plaintiffs-Appellants have asked this Court to vacate the April 11, 2013, Order of the ADWR and remand the matter to ADWR with directions to consider SPRNCA's federal reserved water rights and the other Arizona water rights possessed by the BLM. This Court concludes the authorities and arguments provided by Plaintiffs-Appellants this Court adopts those authorities and arguments in support of its decision. [ADWR did not account for BLM's Federal Reserved Water Rights and ADWR's interpretation conflicts with federal law...]...IV. CONCLUSION. Based on the foregoing, this Court concludes the Arizona Department of Water Resources erred in concluding Pueblo Del Sol Water Co. had an Adequate Water Supply that was legally available."⁷

Specifically, the legal authority for issuance of a 100-year Certificate of Water Adequacy requires the State of Arizona to include Federal Reserved Water Rights in their consideration of legal availability of water for the development.

The Whetstone/Vigneto 100-year Certificate of Water Adequacy was granted on July 14, 2008.⁸ The Whetstone/Vigneto 100-year Certificate of Water Adequacy was issued without consideration of federal water rights in the evaluation of the legal availability of water for Whetstone/Vigneto.

Based on the Order in *Silver v. Fabritz-Whitney*, the City of Benson's July 14, 2008, the Certificate of a 100-year Adequate Water Supply, under which the Whetstone/Vigneto development intends to secure its water, is not valid. The Benson/Whetstone/Vigneto certificate of a 100-year Adequate Water Supply is not valid because ADWR failed (quoting directly from the *Silver v Fabritz-Whitney* Order) "to

⁶ ORDER, Robin Silver, Patricia Gerrodette, United States of America Department of Interior Bureau of Land Management v. Pueblo del Sol Water Company, Sandra a. Fabritz-Whitney Arizona Department of Water Resources, Maricopa County Superior Court of Arizona; June 6, 2014. ["Silver v Fabritz-Whitney"]

⁷ Ibid.

⁸ AWS No. 2008-005 Decision and Order No. 41-401803.0001 In the Matter of the Application of the City of Benson for a Designation as Having an Adequate Water Supply, July 14, 2008.

consider SPRNCA's federal reserved water rights and the other Arizona water rights possessed by the BLM."

ACOE non-fact #7: "5. Parks, National and Historic Monuments, National Seashores, Wild and Scenic Rivers, Wilderness Areas, Research Sites, etc. The Project would not affect any parks, national and historic monuments, national seashores, wild and scenic rivers, wilderness areas, or research sites. The San Pedro River National Conservation Area, located approximately 1.5 miles southeast of the Property, and Kartchner Caverns State Park, located approximately 2 miles south of the Property, are not expected to be adversely affected by the Project. (EA page 31.)

Fact: The St. David Cienega is in the immediate vicinity of the Whetstone/Vigneto development. Based on the latest and best available science, the BLM San Pedro Riparian National Conservation Area's St. David Cienega is likely to be destroyed by Whetstone/Vigneto's groundwater pumping. (Prucha 2016) St. David Cienega is a BLM Research Natural Area.

ACOE non-fact #8: "Therefore, the Project, when considered in combination and in context with past, present, and reasonably foreseeable projects and impacts to waters of the U.S. in the Upper San Pedro River watershed, would not have a significant impact on the watershed, either as an individual project or relative to its contribution to cumulative impacts to the watershed. With the inclusion of the required mitigation measures, this Project would have only minor indirect and cumulative impacts to the aquatic resources of this watershed... (EA page 43.)

Fact: Please see the **Fact** section for **ACOE non-fact** #'s 3, 4 and 7 above.

ACOE non-fact #9: In the section, "Summary of Comments Received...a. Federal Agencies...", ACOE responds to comments provided by the Environmental Protection Agency (EPA) on June 14, 2004, where EPA "...objected to the issuance of a permit for the project because it may result in substantial and unacceptable impacts to aquatic resources of national importance (ARNIs)...; and on July 1, 2004, where "...EPA reaffirmed its objections to the project and stated that the project will have a substantial and unacceptable impact on ARNIs..." (EA pages 48-50.)

In response to these EPA comments, ACOE states,

"...Response 1.1.- The Property is located within a portion of the San Pedro River's Upper Basin watershed that contains only ephemeral desert washes and no special aquatic sites, mesoriparian habitat, or hydriparian habitat. The San Pedro River ranges from approximately 1.8 to 3.5 miles from the eastern boundary of the Property and as far as 6.3 miles from the Property's western boundary...The waters of the U.S. that would be impacted by the Project are best characterized as ephemeral drainages that support relatively low value xeroriparian habitats dominated by plant species also found in adjacent uplands." (EA pages 48-50.)

Fact: Please see the **Fact** section for **ACOE non-fact** #'s 3, 4 and 7 above. Please also see "Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence," EPA Office of Research and Development, January 2015.

ACOE non-fact #10: In the same section, "Summary of Comments Received...a. Federal Agencies...", ACOE responds to comments also provided by EPA regarding concerns about, "*Significant Degradation - 40 CFR 230.10(c). The regulations prohibit discharges that would cause or contribute to significant degradation of the aquatic ecosystem (40 CFR 230.10(c)(3)). The Whetstone project, as proposed, has the potential to do both...*"

In response to these EPA comments, ACOE states,

"...Response 1.3.4. -... The Applicant has presented a study indicating that due to the underlying geology of the area and the location of Project wells, there would be no adverse impact on the flow of the San Pedro River, which is ephemeral in nature down gradient of the property (and therefore primarily dependent on surface flows). The Corps reviewed the study provided by the Applicant and concluded that while it provides a basis to conclude that groundwater pumping would not affect the San Pedro River, the Corps has no control over whether groundwater is used on the Project and the amount of water so used. Moreover, the CWA itself specifically leaves the allocation of water resources to State law. 33 U.S.C. §1344(g)..." (EA pages 56-58.)

Fact: Please see the **Fact** section for **ACOE non-fact** #'s 2, 3, 4, 6 and 7 above.

ACOE non-fact #11:

In the same section, "Summary of Comments Received, Trustees and Beneficiaries of the Miller Ranch Trust commented, [**Comment 1.4.**]"*Clearly this development will use water from the underground aquifers of the San Pedro Valley. This would likely result in the lowering of the water table in this area, which could very possibly cause the artesian wells on various properties to stop flowing. Any pumping for irrigation or watering troughs for animals would be adversely impacted.*"

In response to these comments, ACOE states,

"Response 1.4.- The water supply has been reviewed and approved by ADWR for compliance with all applicable state regulations, including the assured water supply. Further, the Applicant's hydrogeologic consultant has concluded that the Project would not adversely impact the San Pedro River.²⁰ The Corps reviewed the study provided by the Applicant and concluded that while it provides a basis to conclude that groundwater pumping would not affect the San Pedro River, the Corps has no control over whether groundwater is used on the Project and the amount of water so used. Moreover, the CWA itself specifically leaves the allocation of water resources to State law. 33 U.S.C. §1344(g)." (EA page 61.)

Fact: Please see the Fact section for ACOE non-fact #'s 2, 3, 4, 6 and 7 above.

ACOE non-fact #12:

In the same section, "Summary of Comments Received, Bisbee City Councilman Ted White commented (May 30, 2004), "***Comment 2.1.- ...All the data from dozens of State and Federal agencies concur that the San Pedro River is already suffering from serious over pumping of groundwater. A development of this magnitude could be the kiss of death for this wonderful river...***"

In response to these comments, ACOE states,

"Response 2.1.- See Response 1.4. The Corps notes that the Property is located several miles from the San Pedro River and so the Project would have no direct impact on the river itself. Further, the HMMP provides for restoration of a portion of the bed of the river. Thus, the Project should have a positive impact on the river, particularly when compared with other types of development that could occur on the site and for which there would be no mitigation requirements..." (EA page 63.)

Fact: ACOE responds here with a lie by omission. Please see the Fact section for ACOE non-fact #'s 3, 4, and 7 above.

ACOE non-fact #13: "c. Public Interest Review, General Criteria (33 CFR 320.4(a))...1) The relative extent of the public and private need for the proposed structure or work. ...The private need is that of the Applicant to earn a reasonable profit from its investment. The public need is for a safe and adequate infrastructure and a development that meets its needs for housing and other features of a viable residential community, without compromising the interests or rights of other property owners..." (EA page 67.)

Fact: There is no "public need" for development in Benson when weighed against a "private need to earn a reasonable profit" that damages a national and an international treasure. The "public need" is to respect the public interest.

Protecting the San Pedro Riparian National Conservation Area is in the public interest. On November 18, 1988, the U.S. Congress established the San Pedro Riparian National Conservation Area (SPRNCA), "[i]n order to protect the riparian area and the aquatic, wildlife, archeological, paleontological, scientific, cultural, educational, and recreational resources of the public lands surrounding the San Pedro River in Cochise County, Arizona."

On August 6, 1986, accompanying introduction of the SPRNCA-establishing legislation ("REPORT to accompany H.R. 4811"), Arizona congressman and Chairman of the Committee on Interior and Insular Affairs Mo Udall submitted,

"...the bill (H.R. 4811) to establish the San Pedro Riparian National Conservation Area in Cochise County, Arizona, in order to assure the protection of the riparian, wildlife, archaeological, paleontological, scientific, cultural, educational, and recreational resources of the conservation area. and

for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass....

BACKGROUND AND NEED...Riparian (streamside) areas, because of their abundance of water and cover, have historically been the richest wildlife habitats in the arid interior West of the United States. But the water that attracted wildlife also attracted development and utilization by man. Much of the west's aboriginal riparian habitat has suffered from development or past overuse that led to elimination of cover and forage, reduction of water flow due to habitat changes and water diversions, severe erosion problems, and invasion by alien weed species such as tamarisk. An of these factors have combined to greatly degrade the value of many of the west's riparian areas for wildlife habitat.

The San Pedro River is a fortunate exception... that portion of the river affected by H.R. 4811 represents a uniquely long stretch of desert riparian habitat in good condition, as well as other significant resources which greatly enhance its importance as a public resource...

The key provisions of H.R. 4811 require the Secretary to manage this conservation area to protect its riparian area and the natural resources associated with it, including wildlife, and wildlife habitat, and to protect the cultural and paleontological resources of the area. The bill also makes it clear that the primary uses of these resources in this area, consistent with the mandate of this legislation, are educational and scientific ones.

This mandate is intended to be as protective as possible of the natural and cultural resources referred to above..."

Not only has the U.S. Congress recognized the value of the San Pedro National Conservation Area, this value has been recognized national, internationally, and internationally. In 1993, Life Magazine recognized the San Pedro River as one of "America's Last Great Places."⁹ In 1996, the North American Commission for Environmental Cooperation recognized the San Pedro Riparian National Conservation Area as a "Globally Important Bird Area."¹⁰ On November 1, 2004, Arizona Governor Janet Napolitano observed,

"Bird watching is a \$28 million tourism industry in Cochise County," she said. "That's because the San Pedro corridor is one of the richest and most critical bird migration corridors on the planet."¹¹

⁹ "This Land is Our Land, America's Last Great Places and How the May Be Saved Forever," San Pedro River, Arizona, A Free-flowing Waterway is stream of life in the West, Life Magazine, October 1993.

¹⁰ "Ribbon of Life, An Agenda for Preserving Transboundary Migratory Bird Habitat on the Upper San Pedro River, Commission for Environmental Cooperation, 1999.

¹¹ "Governor calls for water conservation, Napolitano mentions San Pedro in speech," Howard Fischer, Capitol Media Services, Sierra Vista Herald, November 2, 2004.

ACOE non-fact #14: "Public Interest Determination...I find that issuance of a Department of the Army permit (with special conditions), as prescribed by regulations published in 33 CFR 320 to 330, and 40 CFR 230, is not contrary to the public interest. The effects of the Project on the public interest factors as defined in 33 CFR 320.4(a) have been evaluated in this document. It has been determined that the Project would not result in significant adverse effects to conservation...aesthetics, general environmental concerns, wetlands...fish and wildlife values... water supply and conservation...or in general the needs and welfare of the people..." (EA page 69; Supplement page 21.)

Fact: Please see the Fact section for ACOE non-fact #'s 1,2, 3, 4, 7, and 13 above. Finding that the development "is not contrary to the public interest" insults logic.

ACOE non-fact #15: ACOE responds to EPA comment, *"In addition to surface hydrological and biological functions, the project is likely to affect groundwater resources at the San Pedro River already exhibiting declining water levels due to groundwater pumping. The increase in groundwater pumping required to serve Whetstone Ranch, combined with the removal of 51 acres of tributary waters, may exacerbate this degradation."* ACOE responds to this EPA comment by answering "Response 1.4: A discussion of the possible impacts to groundwater is provided in Section II.B.6 of the EA [EA page 29.]." (Supplement page 3.)

Fact: Please see the Fact section for ACOE non-fact #'s 4, 5 and 6 above. Please also see "Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence," EPA Office of Research and Development, January 2015.

CONCLUSION

The June 21, 2006, ACOE 404 Permit Number: 2003-00826 fails to accurately and truthfully evaluate issues concerning (1) Federal involvement beyond ACOE, (2) Federal authority to address loss of Federal water, (3) destruction of the St. David Cienega by Whetstone/Vigneto groundwater pumping, (4) ACOE control over the project's linch pin 404 permit, (5) applicability of Arizona State water law to threatened Federal water rights, and (6) whether or not public interest is served by unnecessary and avoidable loss of rare and irreplaceable protected public habitat.

ACOE can correct these errors.

Concerning ACOE permit reevaluation, the June 21, 2006, permit, itself, states (on pages 2-4),

"Further Information:...

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:...

- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above [Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.]).
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision."

Further ACOE reevaluation authority comes **33 CFR Part 325 Processing of Department of the Army Permits...Appendix A - Permit Form and Special Conditions...Permit Conditions:...Further Information** states,

- "5. **Reevaluation of Permit Decision.** This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
 - a. You fail to comply with the terms and conditions of this permit.
 - b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate...
 - c. Significant new information surfaces which this office did not consider in reaching the original public interest decision."

ACOE can revoke the permit.

ACOE revocation authority comes from **33 CFR Part 325 Processing of Department of the Army Permits. Section 325.7 - Modification, suspension, or revocation of permits** states,

- "r. **General.** The district engineer may reevaluate the circumstances and conditions of any permit, including regional permits, either on his own motion, at the request of the permittee, or a third party... and initiate action to modify, suspend, or revoke a permit as may be made necessary by considerations of the public interest.... Among the factors to be considered are... whether or not circumstances relating to the authorized activity have changed since the permit was issued or extended... any significant objections to the authorized activity which were not earlier considered...revisions to applicable statutory and/or regulatory authorities...
- u. **Revocation.** Following completion of the suspension procedures in paragraph (c) of this section, if revocation of the permit is found to be in the public interest, the authority that made the decision on the original permit may revoke it...."

The errors documented in this correspondence are serious. For the San Pedro Riparian National Conservation Area they are historic in nature. Please let us know of your intentions in a timely manner.

Please forward communications of your intention to by mail to: Dr. Robin Silver, Center for Biological Diversity, P.O. Box 1178, Flagstaff, AZ 86002; by phone: 602-799-3275; by FAX: 928-222-0077; or by email: rsilver@biologicaldiversity.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Robin Silver", with a stylized flourish at the end.

Robin Silver, M.D.
Co-founder and Board Member
Center for Biological Diversity

cc: EPA Region 9 Acting Administrator Alexis Strauss (FAX: +1 (415) 947-3588)
BLM Director Neil Kornze (FAX: +1 (202) 208-5242)
BLM Arizona State Director Ray Suazo (FAX: +1 (602) 417-9398)